

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4067 of 1999

to

FIRST APPEAL No 4075 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SPL.LAQ OFFICER

Versus

MAGANBHAI SHANKERBHAI PATEL

Appearance:

MR KG SHETH, AGP for Appellants
MR PRASHANT MANKAD for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 06/04/2000

COMMON JUDGEMENT (PER : M.H.KADRI, J)

Appellants, by filing these First Appeals under Sec.54 of the Land Acquisition Act, 1894 (tobe referred to as the "Act" for short), read with sec.96 of the Code of Civil Procedure,1908 have questioned the validity and legality of the common judgment and award dated 15th May, 1998 of the learned 2nd Assistant Judge, Vadodara in a group of Land Reference Case Nos. 314/96 to 322/96. As these appeals arise from a common judgment and award of the Reference Court and as common questions of facts and law are involved in these First Appeals, we propose to dispose of them by this common judgment.

Executive Engineer, Narmada Canal, Division 2/3, Karjan, District : Vadodara, by his letter dated 1st February, 1992, made a proposal for acquisition of agricultural lands of village Kurai, Ta; Karjan for the public purpose of Narmada Canal Project. Said proposal was scrutinised by the State Government and notification under Sec.4(1) of the Act was published in the Government Gazette on 26th May,1992. After following usual procedure under sec.5-A of the the Act, declaration under Section 6 of the Act was made which was published in Government Gazette on 3rd December,1992. Thereafter, notices under Section 9(3)(4) of the Act were served on the claimants. Claimants, in response to the notices, claimed compensation of the acquired lands before the Land Acq. Officer at the rate of Rs.30/ per sq.mt. Land Acq. Officer, on the basis of the material placed before him, made his award on 1st January, 1995 and offered compensation for the acquired lands of village Kurai at the rate of Rs. 2.60 ps. per sq.mt. for non-irrigated lands and at the rate of Rs. 3.90 per sq.mt. for irrigated lands. Claimants were of the opinion that the compensation offered by the Land Acq. Officer was inadequate and, therefore, they filed written applications under Sec.18 of the Act requiring the Land Acq. Officer to refer their applications to the District Court, Vadodara for determination of the market value of the acquired lands. Accordingly, said applications were referred by the Land Acq. Officer to the District Court, Vadodara which came to be numbered as Land Reference Case Nos. 314/96 to 322/96. All the reference cases were consolidated. Parties led common evidence in Land Reference Case No.322/96

In the applications, respondents claimed that market value offered by the Land Acq.Officer was inadequate looking to the prevailing market price of the lands of surrounding area. It was further claimed that looking to the great potentiality and fertility of the

acquired lands, amount of compensation offered by Land Acq.Officer was inadequate which required to be enhanced. In the applications, respondents claimed compensation of the acquired lands at the rate of Rs.30.00 per sq.mt. The appellants filed their reply at exh.9, inter alia, contending that the compensation offered by the Land Acq.Officer was adequate and the Land Acq.Officer had taken into consideration all the relevant aspects for fixing market price of the acquired lands. It is further averred that Land Acq.Officer had taken into consideration sale-deeds of last five years in determining market price of the acquired lands and, therefore, applications filed by the respondents for enhancement of compensation be dismissed.

On the basis of rival assertions made by the parties, Reference Court raised common issues at exh.11.

Claimants, to substantiate their claim of enhanced compensation of the acquired lands, examined Maganbhai Shankarbhai Amin at exh.6 who was claimant of Land Ref.Case No. 314/96. The witness deposed that Land Acq. Officer had not served them notices under sec. 12(2) of the Act before making the award. He deposed that all the acquired lands were irrigated lands and they used to raise two crops in a year. He claimed that agriculturists of the acquired lands were getting net yield of Rs.15,000/ to Rs.20,000/ per year out of the sale of agricultural produces of the acquired lands. He deposed that village Kurali is adjoining to their village Kurai and lands of village Kurali and Kurai were having same fertility and agriculturists of both the villages were raising crops of same pattern in their agricultural lands. The witness produced certified copy of village form 7/12 extract in support of his claim that they were raising two crops in a year and their lands are irrigated lands. The witness, during his deposition, produced previous award of village Kurali at exh.14 rendered in Land Ref.Case Nos. 1544/92 to 1563/92 & 1685/92. Lands of village Kurali which were the subject matter of the award at exh.14, were acquired for the public purpose of Narmada Canal Project by a notification under sec.4(1) of the Act which was published in the Government Gazette on 1st November,1989. Reference Court, in the award at exh.14, had determined the market value of the agricultural lands of village Kurali as on 1st November, 1989 at the rate of Rs.13.95 per sq.mt. Reference Court mainly relied on the previous award exh.14 for the determination of market value of the present acquired lands. Reference Court held that the acquired lands of the previous award at exh.14, were in all respect, relevant and comparable with the present acquired lands. Reference Court also held that acquired lands of previous

award at exh.14 and the present acquired lands were having same fertility and agriculturists of both the acquired lands were raising crops of the same pattern. It was further held by the Reference Court that village Kurali and village Kurai were adjoining villages and their boundaries were touching with each other. It may be mentioned that lands of previous award at exh.14 were acquired on 1st November, 1989 whereas the present acquired lands were acquired on 26th May, 1992. Even though there was a gap of 2 years and 6 months between the acquisition of two acquired lands, Reference Court did not give any rise in the price of the acquired lands and has only determined the market value of the acquired lands at Rs.13.95 per sq.mt. Reference Court also extended benefits under statutory provisions of the Act in favour of the respondents which has given rise of filing of these appeals by the appellants.

We have perused the record and proceedings of the Reference Court at the time of hearing of these appeals. Learned AGP Mr. Sheth has submitted that previous award exh.14 which was in respect of the agricultural lands of village Kurali, was not at all relevant and comparable in determining the market value of the present acquired lands of village Kurai. Learned counsel for the Government has vehemently submitted that the claimants had not produced any relevant piece of evidence for determination of market value of present acquired lands of village Kurai. Learned AGP, next, contended that previous award of the Reference Court Exh.14 rendered in respect of agricultural lands of village Kurali was neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of the lands acquired in the present case. It was claimed that no cogent evidence was led by the claimants to substantiate their claim of enhanced compensation and, therefore, Reference Court was not justified in enhancing compensation and awarding the compensation at the rate of Rs. 13.95 per sq.mt. The learned counsel for the government further submitted that Land Acq. Officer had taken into consideration sale-deeds of last five years for fixing market value of the acquired lands and the amount of compensation awarded by the Land Acq. Officer was just and adequate and, therefore, Reference Court has erred in enhancing market value of the acquired lands and, therefore, appeals be allowed.

We have heard learned counsel for the respondents Mr. P.D. Mankad who has supported the judgment and award of the Reference Court and submitted that just, reasonable and adequate compensation has been awarded to

the respondents and, therefore, appeals be dismissed.

It is well settled that previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from adjoining village. Previous award provides good guidelines for determination of the market value of the acquired lands which are acquired subsequently by a later notification issued under sec.4(1) of the Act. In absence of any other evidence such as sale transaction, evidence with regard to yield of agricultural lands, the evidence produced in the nature of previous award is also one of the method for determination of the market value of the acquired lands. In the present case, claimants' witness Maganbhai Shankarbhai had demonstrated before the Reference Court that the agricultural lands of village Kurali and the present acquired lands were in all respect having same fertility and agriculturists of both the acquired lands were used to produce similar crops. It is borne out from the evidence produced in the present case that village Kurai and Kurali were adjoining to each other and agricultural lands of both the villages were similar and agriculturists used to raise crops of the same pattern. Therefore, we are of the opinion that the Reference Court has not committed any error in placing reliance on the previous award exh.14 which was with regard to the acquired lands of village Kurali for determination of the market value of village Kurai. It is not brought to our notice that judgment and award rendered in previous award at exh.14 was challenged in the higher forum. Therefore, previous award at exh.14 had become final. One witness was examined by the opponent namely Smt. Minaxiben Nagjibhai Gandhi at exh.25 who was, at the relevant time, working as Deputy Mamatdar in the office of Collector, Bharuch. The witness had shown ignorance and had stated that she had not seen lands of village Kurai and, therefore, she is not in a position to depose about the fertility of the acquired lands of above two villages. It may be stated that witness admitted in her cross-examination that before she joined service as Deputy Mamatdar in the office of the Collector, Bharuch, award of the acquired lands was already declared. Thus, evidence of witness Smt. Minaxiben at exh.25 is not at all helpful to the appellants to dislodge the case of the respondents-claimants with regard to the claim of enhanced compensation. Taking over all view of the matter, we are of the opinion that the Reference Court had not committed any error in placing reliance on the previous award exh.14 which was in respect of the

acquired lands of village Kurali and acquired lands of village Kurali were, in all respect, comparable with the acquired lands of village Kurai. Reference Court had awarded uniform rate of compensation to all the acquired lands because as per the award of the Land Acq. Officer produced on the record of this case, all the acquired lands were irrigated lands and determination of market value for irrigated lands at Rs. 13.95 ps. per sq.mt., in our opinion, is just and adequate and no interference is called for. Finding of the Reference Court with regard to extended benefits under the statutory provisions of the Act is also eminently just and proper and does not call for any interference by this Court. However, it is made clear that respondents shall not be entitled to interest on the amount of solatium and on additional amount under sec. 23(1-A) of the Act as per the settled legal position.

Before parting, we observe that on the contrary, determination of market value of the acquired lands by the Reference Court is on a lower side because previous award dated 14 indicated that lands of previous award were acquired on 1st November, 1989 whereas the present lands were acquired by a notification under sec.4(1) of the Act issued on 26th May, 1992. Reference Court has not given any rise in price which ought to have been given, but as the claimants have not preferred any cross-appeals or cross-objections, we are left with no other

alternative but to award the same rate of compensation as awarded by the Reference Court.

As a result of foregoing discussion, we do not find any merits in these appeals and they are dismissed. There shall be no order as to costs.

05.04.2000 [M.H. KADRI, J]

[C.K. BUCH, J]

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